

Charitable contribution; benefit of contributors. An individual who claims to be a minister, organizes a church, deposits salary checks for salary earned from outside employment in the church's bank account, and uses the funds of the account for lodging, food, clothing, and other living expenses is not entitled to a charitable deduction for the amount of the salary checks.

Advice has been requested whether, under the circumstances described below, the taxpayer is entitled to a deduction for a charitable contribution under section 170 of the Internal Revenue Code of 1954.

The taxpayer, claiming to be a duly ordained minister of the gospel, formed a new organization under the name of the ABC church. The original membership of the ABC church consisted of the taxpayer, the taxpayer's spouse and two minor children, and a few family friends. Taxpayer was employed fulltime by a state government, and continued in this employment after the ABC church was formed.

During 1977 the salary checks received by the taxpayer were deposited in a bank account maintained in the name of the ABC church and funds from this account were used to furnish the taxpayer with lodging, food, clothing and other living expenses in a manner comparable to that which the taxpayer had previously enjoyed. The amounts deposited in the ABC church account were primarily used to pay living expenses of the taxpayer; a portion was retained by the organization as a contingency fund.

Section 170 of the Code provides, subject to certain limitations, a deduction for charitable contributions to or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 170(c)(2) of the Code provides, in part, that the term 'charitable contribution' means a contribution or gift to or for the use of a corporation organized and operated exclusively for religious or other charitable purposes, no part of the net earnings of which inures to the benefit any private shareholder or individual.

The term 'charitable contribution', as used in section 170 of the Code, has been held to be synonymous with the word 'gift.' See *Channing v. United States*, 4 F. Supp. 33 (D. Mass. 1933), *aff'd per curiam*, 67 F.2d 986 (1st Cir. 1933), *cert. denied*, 291 U.S. 686 (1934). A gift for purposes of section 170 is a voluntary transfer of money or property that is made with no expectation of procuring a commensurate financial benefit in return for the transfer. H.R. Rep. 1337, 83rd Cong., 2d Sess. A44 (1954); S. Rep. No. 1622, 83rd Cong., 2d Sess. 196 (1954). It follows that if the benefits the donor can reasonably expect to

obtain by making the transfer are sufficiently substantial to provide a quid pro quo for it, then no deduction under section 170 is allowable. See Rev. Rul. 72-506, 1972-2 C.B. 106.

In the instant case the money deposited by the taxpayer in the ABC church account was used or available for use for the taxpayer's benefit. The taxpayer had complete control and enjoyment of the money and it was used to maintain the taxpayer's accustomed standard of living. Under the circumstances no portion of the amounts deposited by the taxpayer in the ABC church account can be identified as for the exclusive benefit of the organization.

Accordingly, the amount of the salary checks deposited by the taxpayer in the bank account maintained in the name of the ABC church is not deductible as a 'charitable contribution' under section 170 of the Code.

Although the expectation of a quid pro quo would preclude the allowance of a deduction under section 170 of the Code even if the donee were an organization described in section 170(c)(2), it should be noted that, in this case, the ABC church is not such an organization. On the facts stated above, the ABC church is operated for the private purposes of the taxpayer and thus is not operated exclusively for religious or other charitable purposes as required by the statute. Moreover, since the funds of the ABC church are used by or on behalf of the taxpayer, there is inurement of the type proscribed by the statute.

Accordingly, an alternative basis for denying a charitable contribution deduction for the amount deposited by taxpayer in the ABC church account is that the organization is not a qualified donee described in section 170(c)(2) of the Code.